

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DEBRA LINDEMANN,)	
)	
Plaintiff,)	
)	
vs.)	Case No.: 3:10-cv-00837-WDS-DGW
)	
PANERA BREAD COMPANY,)	
)	
Defendant.)	

***DEFENDANT'S PARTIAL MOTION TO DISMISS PLAINTIFF'S
COMPLAINT FOR FAILURE TO STATE A CLAIM AND MOTION
FOR ATTORNEY'S FEES***

COMES NOW Defendant, Panera Bread Company, by and through the undersigned counsel, pursuant to Fed. R. Civ. P. 12(b)(6), and for its Partial Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim and Motion for Attorney's Fees, states as follows:

1. Plaintiff alleges in her Complaint that on May 12, 2009, she filed a Charge of Discrimination with the EEOC claiming that her former employer, Defendant Panera Bread Company ("Defendant Panera"), wrongfully discharged her on December 9, 2008 as a result of her race, age, and sex in violation of her civil rights under Title VII of the Civil Rights Act of 1964, as amended, the Equal Pay Act (EPA), and the Age Discrimination in Employment Act (ADEA). *See, Doc. No. 2.*
2. On August 12, 2009, EEOC Director James Neely, Jr. mailed Plaintiff a copy of her Right to Sue Notice. *See, Doc. No. 2-1, p. 1.* Plaintiff then had ninety days to file her lawsuit against Defendant Panera for her claims brought pursuant to Title VII and the ADEA.

3. Plaintiff did not file her lawsuit until October 22, 2010, which was over a year after she received her Right to Sue Notice. *See, Doc. No. 2.*
4. Plaintiff alleges in Count I of her Complaint that Defendant Panera wrongfully terminated her and intentionally discriminated against her on the basis of her gender in violation of Title VII of the Civil Rights Act of 1964.
5. Plaintiff alleges in Count II of her Complaint that Defendant Panera wrongfully terminated her due to her age, 51, and allegedly engaged in discriminatory conduct against its managers on the basis of age in violation of the Age Discrimination Employment Act (ADEA) of 1967, 29 U.S.C. Sec. 62, et seq.
6. Count I of Plaintiff's Complaint fails to state a claim against Defendant Panera for gender discrimination because her Title VII claims are time-barred due to Plaintiff's failure to file her suit within the requisite ninety days after receipt of a Notice of Right to Sue Letter from the EEOC.
7. Count II of Plaintiff's Complaint fails to state a claim against Defendant Panera for age discrimination under the ADEA because her claims are time-barred as they were not filed within the requisite ninety days after receipt of a Notice of Right to Sue Letter from the EEOC.
8. Defendant Panera is entitled to attorney's fees pursuant to 42 U.S.C. § 2000e-5(k) because there is no jurisdictional basis for Plaintiff's Title VII and ADEA claims.

WHEREFORE, for all the above-stated reasons, Defendant Panera Bread Company asks this Court to grant its Partial Motion to Dismiss and Motion for Attorney's fees, and for any additional relief this Court deems just and proper.

/s/ Jessica A. Brasel

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AFFIDAVIT OF SERVICE

I, the undersigned, certify that copy of the foregoing has been electronically served on all counsel of record via the Court's CM/ECF system, or U.S. mail for parties not registered with CM/ECF, on this 1st day of December, 2010.

Ms. Rhonda D. Fiss
Attorney for Plaintiff
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Under penalties of perjury as provided by law, I certify that the statements in this affidavit are true.

Jessica A. Brasel